

CHAPTER 9. TIERING, TIME LIMITATIONS, WRITTEN REEVALUATION,
AND SUPPLEMENTAL ACTIONS

88. TIERING. Program offices shall, to the extent practicable, build upon broad prior assessments, whether EIS or FONSI. For example, long-term development statements and broad system, program, or regional statements may be incorporated by specific project EISs. The purpose of tiering is to eliminate repetition and allow discussion of issues at the appropriate level of detail. (See CEQ sec. 1500.4, 1502.4, 1502.20, and 1508.28.)

89. REDUCING PAPERWORK. Environmental documentation prepared under this order shall be concise and clear. Length of documentation shall be reduced by avoidance of needless detail and by other means such as setting appropriate page limits. (See CEQ sec. 1500.4.)

90. REDUCING DELAY. Environmental documentation prepared under this order shall be integrated into the decisionmaking process and shall be carried on in a timely manner. (See CEQ sec. 1500.5).

91. TIME LIMITS FOR ENVIRONMENTAL DOCUMENTS. The time limits below have been established for all DOT EISs.

a. A draft EIS may be assumed valid for a period of 3 years. If the proposed final EIS is not submitted to the approving official within 3 years from the date of the draft EIS circulation, a written reevaluation of the draft shall be prepared by the responsible Federal official to determine whether the consideration of alternatives, impacts, existing environment, and mitigation measures set forth in the draft EIS remain applicable, accurate, and valid. If there have been changes in these factors which would be significant in the consideration of the proposal, a supplement to the draft EIS or a new draft EIS shall be prepared and circulated.

b. With regard to approved final EISs, three sets of conditions have been established:

(1) If major steps toward implementation of the proposed action (such as the start of construction, substantial acquisition, or relocation activities) have not commenced within 3 years from the date of approval of the final EIS, a written reevaluation of the adequacy, accuracy, and validity of the final EIS shall be prepared by the responsible Federal official (unless EIS tiering is being used). If there have been significant changes in the proposed action, the affected environment, anticipated impacts, or proposed mitigation measures, a new or supplemental EIS shall be prepared and circulated.

(2) If the proposed action is to be implemented in stages or requires successive Federal approvals, a written reevaluation of the continued adequacy, accuracy, and validity of the final EIS shall be made at each major approval point which occurs more than 3 years after approval of the final EIS and a new or supplemental EIS prepared, if necessary.

(3) If the proposed action has been restrained or enjoined by court order or legislative process after approval of the final EIS, the 3 year period may be extended by the time equal to the duration of the injunction, restraining order, or legislative delay.

92. WRITTEN REEVALUATION. The preparation of a new EIS or FONSI is not necessary when it can be documented that: the proposed action conforms of plans or projects for which a prior EIS or FONSI has been filed; the data and analyses contained in the previous EIS or FONSI are still substantially valid; and that all pertinent conditions and requirements of the prior approval have or will be met in the current action. This evaluation, signed by the FAA responsible official, will either conclude the contents of previously prepared environmental documents remain valid or that significant changes require the preparation of a supplement or new environmental document.

93. SUPPLEMENTAL OR AMENDED STATEMENTS. CEQ sec. 1502.9(c) states that "Agencies:

a. Shall prepare supplements to either draft or final EISs if:

(1) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(2) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

b. May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

c. Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

d. Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council."

e. If there are compelling reasons to shorten time periods, FAA may consult with CEQ.

94. IMPLEMENTATION OF COMMITMENTS IN ENVIRONMENTAL STATEMENTS. In accordance with CEQ sec. 1505.3, "Mitigation ... and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency." This section of the CEQ Regulations further specifies actions which the lead agency shall take to implement environmental commitments. The FAA shall take steps as

appropriate to the action, through special conditions, funding agreements, contract specifications, preferential arrival and departure procedures, directives, other project review or implementation procedures, and other appropriate follow-up actions that the agency and applicants carry out any actions to minimize adverse environmental effects set forth in the approved statement. Any proposed deviation from prescribed action that may reduce protection to the environment shall be submitted to the Office of Environment and Energy.

95. LIMITATIONS ON ACTIONS. In accordance with CEQ sec. 1506.1, actions concerning the proposal shall not be taken until the responsible office issues the Record of Decision.

96. RECORD OF DECISION.

a. Following the review periods prescribed in CEQ sec. 1506.10, the FAA decisionmaker may make a decision on the Federal action. CEQ sec. 1505.2 requires a Record of Decision (ROD) and specifies information to be included in the Record of Decision. The draft ROD should accompany the proposed final statement during the internal review prior to EIS approval only when headquarters' concurrence is required.

b. Any mitigation measures which were made a condition of the approval of the EIS shall be included in the ROD. Proposed changes in or deletions of mitigation measures which were a condition of approval of the EIS must be reviewed by the same FAA offices which reviewed the final statement and must be approved by the EIS approving official.

c. If the responsible official wishes to take an action which was included within the range of alternatives of an approved EIS but was neither the environmentally preferable alternative or alternatives nor the agency's preferred alternative as identified in the final statement, the decisionmaker must first coordinate a draft ROD for concurrence with the same FAA offices which reviewed the final statement. These offices may concur without comment, may concur on the condition that specific mitigation measures be incorporated in the ROD, may request that a supplement to the EIS be prepared and circulated, or may nonconcur. The responsible official shall not approve the Federal action over a nonconcurrence.

d. If the alternative the responsible official wishes to take action on involves a special interest (e.g., Section 4(f) land, endangered species, wetlands, historic sites, or others), the FAA must first complete any required evaluation and consultation that has not been done, including supplementing the original EIS, prior to taking the action. Supplements to EISs shall be reviewed and approved in the same manner as the original document, and a new ROD shall be prepared and approved. If a ROD is prepared, a copy should be forwarded with the EIS to AEE-1 for their files.

97. PUBLIC RECORD. Relevant environmental documents, comments, and responses are part of the agency's public record and shall be made available to the public through appropriate regional, office or service procedures.

98. USE OF INFORMATION.

a. CEQ sec. 1506.5(c) specifically provides "Nothing ... is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency."

b. The use of information obtained in the manner set forth above may obviate the need for extensive contractual efforts in preparing an environmental impact statement. It must be cautioned, however, that any information so received may only be used after thorough analysis and acceptability of its contents by the FAA. To the extent that the qualifications of those persons primarily responsible for its preparation and the identification of persons responsible for particular analyses should be listed for incorporation in the list of preparers of the environmental impact statement (see paragraph 68 of this order).

99.-100. RESERVED.